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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 948

JAMES W. KINDELAN and MARY KINDELAN,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF TO BRIEF FOR THE UNITED STATES

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E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3030

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The Government's brief in opposition to the Writ is based upon demonstrably false assumptions. For example it is said that the Miami Shores Country Club Association elected the Board of Committees and the Chairmen of the various operational sub-committees "which substantially controlled the country club except in fiscal matters." The Miami Shores Country Club Association was not the association, membership in which is claimed to be subject to the excise tax herein involved. It was a voluntary association of golfers and others who used the facilities of the club. Former chairmen of this associa-

tion testified that they had no control over the activities of the club. Miller, R. 136; Holt, R. 127; Thornton, R. 141, 143.

Moreover, McCall, Village Manager, testified that the country club was a part of the Recreational Department, was operated under the Village Manager, who in turn appointed a Club Manager, who in turn appointed his own staff and hired his own people (R. 29, 31).

Again the Government says that the Miami Shores Country Club was sufficiently controlled by its restricted membership (through the Board of Committees and its sub-committees) to bring it within the statute.

The witnesses Holt, Miller and Thornton, who testified for the Government, completely disaffirm any authority that they might have thought they had as chairmen of the association to control the activities in the club.

Our position is that there cannot factually exist an exclusive club on a municipally owned, operated and controlled facility. The Miami Shores Country Club is operated as a part of the Recreational Department of the Village which functions under an act of the Legislature.

There is simply no factual situation that would justify the imposition of the tax herein levied.

The Writ should issue.

Respectfully submitted,

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I HEREBY CERTIFY that a copy of the foregoing Reply Brief was mailed to THURGOOD MARSHALL, Solicitor General and C. MOXLEY FEATHERSTON, Acting Assistant Attorney General, U. S. Department of Justice, Washington, D. C., this 2nd day of March, 1966.

THOMAS H. ANDERSON